

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 94-191-T - ORDER NO. 97-537
JUNE 23, 1997

IN RE: Application of Jimmie Ray Collins DBA)	ORDER DENYING
Collins Moving & Storage, 3097 N.)	AMENDMENT OF
Blackstock Road, Spartanburg, SC 29301,)	CERTIFICATE
to Amend Class E Certificate of Public)	OF PUBLIC
Convenience and Necessity No. 9548.)	CONVENIENCE
)	AND NECESSITY

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Application of Jimmie Ray Collins DBA Collins Moving & Storage (Collins or the Applicant) to amend a Class E Certificate of Public Convenience and Necessity No. 9548 from his present authority to transport household goods between points and places in Greenville and Spartanburg Counties to between point and places in South Carolina. The Application was filed pursuant to S.C. Code Ann. Section 58-23-590 (Supp. 1996), and the Regulations of the Public Service Commission of South Carolina.

Pursuant to the directions of the Commission's Executive Director, Collins published, one time, in a newspaper of general circulation a Notice outlining the relief sought. Four Petitions to Intervene were received. The Intervenor in this matter were Carey Moving & Storage, Inc., Carey Moving & Storage of Greenville, Inc., Lytle's Transfer & Storage, Inc., and Dickert's

Moving & Storage, Inc. The Applicant furnished proof to the Executive Director that he had complied with the Executive Director's instructions.

Accordingly, a hearing was held on May 19, 1997 at 11:00 a.m., in the offices of the Commission, with the Honorable Guy Butler, presiding. The Applicant was represented by John F. Beach, Esquire and F. Lee Prickett, Jr., Esquire. The Commission Staff was represented by F. David Butler, General Counsel. The Intervenor Carey Moving & Storage, Inc., Carey Moving & Storage of Greenville, Inc., and Lytle's Transfer & Storage, Inc. were present but were not represented by counsel. Dickert's Moving & Storage, Inc. was not present nor was it represented by counsel at the hearing.

At the outset, we must consider a Motion by the Applicant to dismiss the Intervenor Julius Dickert. Pursuant to an alleged failure to furnish discovery responses, it appears that Order No. 97-198 granted the Applicant's Motion to Compel against Dickert, and that Dickert was ordered to answer Applicant's Interrogatories by March 21, 1997. According to Collins, Dickert has failed to do so, and therefore, should be dismissed as an Intervenor. We have examined this matter, and agree with the Applicant. Dickert is hereby dismissed as an Intervenor in this matter.

The Applicant Jimmie Ray Collins presented his own testimony, and that of Annette Costa and Gary Veechler. P.A. Carey presented testimony, as did M.A. Carey and Bill Bland of the Intervenor.

Jimmie Ray Collins testified on his own behalf. Collins

stated that he started working in the moving business in 1966, and that he had been in the Greenville/Spartanburg County area since 1994. He states that he has a total of 17 employees. He further stated that he possesses seven vehicles for the use in the moving and storage business. He felt that he was fit, willing, and able to provide the expanded service to the entire State of South Carolina from his present two-county area. Collins Application noted only six vehicles ranging in origin from 1961 to 1975. In no case did Collins have a vehicle for a more current year than 1975.

Collins further attempted to address the public convenience and necessity by stating that there had been major changes in the upstate, that BMW is there, and a number of suppliers came along attached to BMW. Further, he stated that several new industries have established themselves in the Greenville/Spartanburg area, and therefore, there was plenty of work for everyone in the household goods moving business.

Annette Costa testified that she had worked for Collins since 1994 at a wide variety of duties, including payroll and bookkeeping. She states that she has gotten a lot of calls inquiring about moves that would be out of scope for Collins with his present authority.

Gary Veechler testified. Veechler is the Southeast Regional Manager of Wheaton Van Lines. Wheaton is a privately-owned company. Wheaton states that it has contracted with Collins to become a Wheaton agent. Veechler, though from out-of-state,

stated that the Greenville/Spartanburg area had exploded, and that there was plenty of business for a number of household goods movers in that area.

P.A. Carey, President of Carey Moving & Storage, Inc., testified that he is an Allied Van Lines franchisee. Carey states that his company does everything it can to continue to grow, but that business at present is flat. Carey further states that Veechler was not a customer of Collins. Carey further stated that the public convenience and necessity, in his opinion, was already being served.

M.A. Carey testified, stating that there are 26 movers in the Greenville/Spartanburg area, and that in general, the public convenience and necessity is being served. Further, Carey noted that Wheaton, as represented by Veechler, holds no intrastate authority within the State of South Carolina.

Next, Bill Bland of Lytle's Moving & Storage testified. Bland stated that Collins authority would not be harmful in and of itself, but that the more authority granted, the fewer movers there will be in South Carolina.

S.C. Code Ann. Section 58-23-590(C) (1) and (2) state as follows:

The commission shall issue a common carrier certificate or contract carrier permit of public convenience and necessity if the applicant proves to the commission that:

- (1) it is fit, willing, and able to properly perform the proposed service and comply with the provisions of this chapter and the commission's regulation; and
- (2) the proposed service, to the extent to be

authorized by the certificate or permit, is required by the present public convenience and necessity.

The Regulations further define what constitutes fit, willing, and able under the statute. We think that Regulation 103-133(1)(b) is applicable, and of significance in this case.

b. ABLE. The applicant shall demonstrate that he has either purchased, leased, or otherwise arranged for obtaining necessary equipment to provide the service for which he is supplying...

We have examined the entire record of this matter, including the testimony, and all the evidence, and have concluded that the Application for Amendment of the Certificate of Public Convenience and Necessity for Jimmie Ray Collins must fail on two grounds.

First, we are of the opinion that Mr. Collins is not able to furnish the expanded service by virtue of the age of his equipment. As stated above, the most current vehicle possessed by Mr. Collins is a 1975 Ford. In our view, this aged equipment may not successfully be used to service a state-wide clientele as requested by Mr. Collins. The testimony of Mike Carey showed that certain large franchises, such as Allied, require trucks no older than 10 years old for use by Allied franchisees. We therefore believe that Collins equipment is inadequate to service the entire State, and that Collins therefore has not met his burden of proof, in that we do not believe that he is "able" to properly perform the proposed service which, as proposed, would be on a state-wide basis. His equipment is just too old. Further, we would note that just because the vehicles pass the Department of Public Safety safety

inspections does not insure that such aged equipment would continue to perform during the provision of state-wide service. We do not believe, however, that this would pose as significant a problem servicing the two counties for which Mr. Collins presently possesses authority.

Second, we do not believe that Collins carried his burden with regard to showing that the proposed expanded service is required by the present public convenience and necessity pursuant to the statute. Collins own testimony is not credible in this regard, nor is that of Annette Costa, his employee. We note that Gary Veechler, the Southeastern Regional Manager of Wheaton, attempted to provide evidence in this area by saying that the Greenville/Spartanburg area has exploded. As shown by Intervenor witnesses, Wheaton is essentially an interstate company, and it holds no intrastate authority in South Carolina. Therefore, it has no real knowledge of intrastate business, other than what it has been told. Because of this, again, we do not think that Collins showed that the proposed service to the extent to be authorized by the Certificate was required by the present public convenience and necessity.

We note that the Applicant attempted to portray Gary Veechler as a "shipper witness." This is inconsistent with the term of art as used in the moving business. A shipper has historically been a potential customer of a trucking company, and one that would actually use that company to ship items to various locales. Veechler, as shown by Intervenor testimony, was not a customer of

Collins, but was merely a franchisor.

We note that in the past, when the burden was on the Intervenor to show that the public convenience and necessity was being served, our South Carolina Supreme Court went so far as to suggest that a statistical survey on the public convenience and necessity was needed. See Welch Moving & Storage Company v. The Public Service Commission, 391 S.E.2d 556 (1990). At this time, we do not go so far as to hold that a statistical survey such as that contemplated in Welch is appropriate here, but we do believe that the Applicant could have made a better case for the public convenience and necessity being required by his Application by the use of more credible evidence, such as the testimony of actual shipper witnesses.

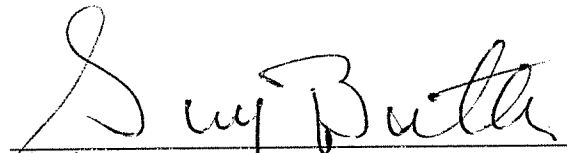
Because of the reasoning stated above,

IT IS THEREFORE ORDERED THAT:

1. The Application for amendment of the Certificate of Public Convenience and Necessity of Jimmie Ray Collins DBA Collins Moving & Storage from Greenville and Spartanburg Counties to between points and places in South Carolina is denied.

2. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)